

In the
United States Court of Appeals

For the Ninth Circuit

No. 21310

CALIFORNIA GAS PRODUCERS ASSOCIATION
INDEPENDENT OIL AND GAS PRODUCERS
OF CALIFORNIA
JADE OIL AND GAS COMPANY
Petitioners.

v.

FEDERAL POWER COMMISSION
Respondent.

On Petition to Review an Order of the
Federal Power Commission

**Initial Brief on Behalf of
California Gas Producers Association,
Independent Oil and Gas Producers of California,
Jade Oil and Gas Company**

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PRELIMINARY STATEMENT

This case involves an appeal filed by the California Gas Producers Association, the Independent Oil and Gas Producers of California, and the Jade Oil and Gas Company ("California producers") for review of three orders issued by the Federal Power Commission ("FPC, Commission") authorizing a subsidiary of Pacific Gas & Electric Company ("PG&E") to import a large volume

of Canadian gas into northern California starting November 1966. (*Re Pacific Gas Transmission Company*, Docket No's. CP65-213, 214, 215).

These orders are:

- 1) Order Denying Reconsideration, Waiver of the Commission's Rules and Making Determination of the Question of "Extraordinary Circumstances" (issued December 17, 1965; R. 4890 - 4893).
- 2) Opinion and Order Issuing Certificate and Authorizing Importation of Natural Gas (issued June 15, 1966; R. 5315 - 5316).
- 3) Order Denying Applications for Rehearing (issued August 4, 1966; R. 5315 - 5316).

The appeal is filed pursuant to the provisions of Section 19 (b) of the Natural Gas Act (15 USC § 717r (b)).

QUESTIONS PRESENTED

1. In authorizing PG&E to import large volumes of Canadian gas into northern California starting in 1966 and 1967, can both PG&E and the FPC ignore completely the possibility of any new discoveries of natural gas in northern California after December 31, 1965 in determining whether a "market" exists in northern California for the newly authorized supplies of imported Canadian gas?
2. In authorizing PG&E to import large volumes of Canadian gas into northern California can the FPC refuse to receive and consider evidence showing the existence and availability of alternative supplies of natural gas from west Texas and New Mexico which could be delivered to the California border at a lower cost?

INTEREST OF THE CALIFORNIA GAS PRODUCERS

The California gas producers consist of:

- (a) The California Gas Producers Association — a voluntary association consisting of several medium-sized independent, and a number of smaller, producers of natural gas in California. The production represented is predominantly dry gas in the Sacramento Valley area (the northern part of California's Central Valley). The production includes reserves in the newly-discovered and developed major Dutch Slough, West Butte, West Grimes, Los Medanos, Lathrop, McMullin Ranch, and Willow Pass Fields in San Joaquin, Contra Costa, Sutter, and Colusa Counties.
- (b) The Independent Oil and Gas Producers of California (successor to the Oil Producers Agency of California) — whose membership consists of independent oil and gas producers in California covering oil and gas production in nearly all producing areas of the State. The Independent Producer's 50 - 60 members cover approximately 25% of California's oil production — with much of which the production of California's natural gas is associated.
- (c) Jade Oil and Gas Company — an individual California gas producer producing and selling natural gas in both northern and southern California.

The California producers are aggrieved by the FPC's Order Denying Reconsideration (issued December 17, 1965), Opinion No. 495 and the accompanying Order (issued June 15, 1966) and the Opinion and Order on Rehearing issued August 4, 1966, since by these orders the FPC approved the importation and delivery of up to nearly \$20 million a year of natural gas by Pacific Gas Transmission Company from the Province of Alberta, Canada to Pacific Gas Transmission Company's parent, Pacific Gas and Elec-

tric Company (PG&E), in northern California. These additional supplies of natural gas are being delivered and sold to PG&E in direct competition with similar volumes of natural gas produced and sold to PG&E by the California gas producers. To the extent that these large additional volumes of natural gas are delivered and received in northern California, and are sold to PG&E, the market for California produced gas will similarly be reduced by \$20 - \$30 million a year.

The California gas producers were active parties in the proceedings before the FPC in which the Opinion and Order complained of here was issued. They petitioned (R. 4256 - 4262; 4265 - 4269; 4415 - 4423) and were admitted as intervenors by FPC orders issued May 25, 1965 (R. 4374 - 4377), and July 27, 1965 (R. 4469). They attended and presented affirmative evidence, and participated in cross-examination at the extensive hearings before the FPC's Presiding Examiner in Washington, D. C. in September, 1965 (R. 1 - 1783). They sought — and were denied by FPC order issued December 17, 1965 (R. 4890 - 4893) — the right, along with other protesting parties, to require the production of certain evidence by subpoena. They filed Briefs (46 pages) with the Presiding Examiner, and Briefs on Exceptions (56 pages; R. 5026 - 5087) with the full Commission. Finally, after receipt of the FPC's Opinion and Order authorizing the importation of gas into northern California, they filed an appropriate Application for Rehearing (21 pages; R. 5285 - 5311 which was denied by Commission Order issued August 4, 1966 (R. 5315 - 5316)).

Briefly, it is the position of the California producers that under the circumstances in this proceeding, the FPC's act in authorizing the importation and delivery of these increased volumes of natural gas from Canada into northern California starting November 1, 1966, is not warranted by the "public convenience and necessity" under Section 7(e) of the Natural Gas Act (15 USC § 717f(e)), and is not "consistent with the public interest" under Section 3 of

the Natural Gas Act (15 USC § 717b). Although improperly made by the FPC, the FPC's action was made with finality, the new supplies of natural gas from Canada are now being received in northern California, and the petitioning California producers are "aggrieved" thereby.

GROUND'S UPON WHICH RELIEF IS SOUGHT

It is the position of the California gas producers that the FPC's Opinions and Orders of December 17, 1965, June 15, 1966 and August 4, 1966 are unlawful and improper in the following respects:

- 1) The Commission failed to consider Pacific Gas and Electric Company's estimated "cut-backs" of California produced gas in order to provide a market for the proposed importation of Canadian gas.
- 2) The Commission failed to adequately consider the availability of alternative supplies of natural gas from El Paso Natural Gas Company (or Transwestern Pipeline Company).

These matters were briefed before the Presiding Examiner and the Commission and were made the subject of the California gas producers Petition for Rehearing before the Commission (R. 5286 - 5311). After summary denial (R. 5315 - 5316), the California gas producers bring these issues to the Court here for decision.

ARGUMENT

I THE COMMISSION FAILED TO CONSIDER PACIFIC GAS AND ELECTRIC COMPANY'S ESTIMATED "CUT-BACKS" OF CALIFORNIA PRODUCED GAS IN ORDER TO PROVIDE A MARKET FOR THE PROPOSED IMPORTATION OF CANADIAN GAS.

In its Opinion, the Commission states simply that (Finding (6), page 6; R. 5256)):

"(6) A market exists for the proposed additional sales of natural gas by Pacific Gas Transmission Company to Pacific Gas and Electric Company."

In making this statement, the Commission disregards completely the fact that in order for PG&E to make a "market" for the Canadian gas which PGT (and PG&E) plans to import, PG&E estimates an unjustified reduction in its purchases of northern California gas.

a) The "Market" For Canadian Gas

Thus, in reply to questions, PG&E gas supply witness Haavik made a comparison of the indicated total available supply of gas to PG&E from individual sources for 1963 - 1964 (actual) compared with 1970 (Ex. No. 25; R. 2824).

SUMMARY OF ACTUAL AND ESTIMATED PG&E GAS PURCHASES

Average (Mcf per Day)	California Produced Gas		Canadian Gas	
	Average Daily Amount	Reduction From 1963	Average Daily Amount	Increase Over 1963
Actual:				
1963	632,000	—	348,000	—
1964	628,000	4,000	398,000	50,000
Estimated:				
1965	608,200	23,800	416,800	68,800
1966	604,200	27,800	433,200	85,200
1967	525,600	106,400	530,800	182,800
1968	453,500	178,500	614,400	266,400
1969	487,800	144,200	614,400	266,400
1970	328,200	303,800	614,400	266,400
Actual:	Exhibit 17, page 7, Columns q, s (R. 2390)			
Estimated:	Exhibit 17, page 9, lines 15 - 19 (R. 2392)			

Based on this overall gas supply, Mr. Haavik agreed that there would be a reduction in the purchases of California gas during the 1965 - 1970 period, and these reductions in the purchases of California gas would, except for about 40,000 Mcf per day, be exactly offset by increases in purchases of Canadian gas (R. 845).

Using 30¢ per Mcf for PG&E's purchases of northern California dry gas, Mr. Haavik stated that (based on his estimates) PG&E's estimated purchases of northern California gas would decline from \$63,900,000 in 1965 (215 billion cubic feet) to \$30,900,000 in 1970 (103 billion cubic feet) (R. 828 - 829).

It is, thus, abundantly clear that, based on PG&E's data of record in this proceeding that PG&E estimates sharp cuts in its purchases of northern California dry gas in order to create a market for its proposed imports of Canadian gas starting in November, 1966.

What the Commission's decision does is to create a "market" for PG&E's proposed importation of Canadian gas by denying that market to available supplies of locally produced northern California gas. No other basis can be found for the Commission's decision finding that a "market" exists for the proposed deliveries of Canadian gas which the Commission's decision authorizes.

b) The Availability of California Produced Gas

The only method, in fact, by which PG&E can justify its importing additional gas from Canada as early as November, 1966 in order to meet northern California requirements is by scheduling an unjustified drop in available northern California gas supplies by over 1000,000 Mcf per day, or nearly 20%, from present levels (Ex. No. 17, pages 7, 9; R. 2390, 2392; Ex. 25; R. 2825).

The necessity for PG&E's planned importations of Canadian gas in November 1966 must rest upon PG&E's "need" for such additional sources of gas supply in order to meet its average day market

requirement. This PG&E was able to justify only by:

- 1) Projecting sharp cut-backs in its estimated purchases of northern California gas, and
- 2) Shutting off all consideration of the availability of any future supplies of northern California gas.

Neither this premise, nor the estimates based on this premise, can be considered to be "realistic", as a basis for projecting the future supply of northern California gas available to PG&E. There will, in fact, be a much larger supply of northern California gas than forecast by PG&E, and this must be taken into account in determining the necessity for PG&E's proposed additional importation of Canadian gas.

In fact, in the past several years, PG&E's purchases of California gas have steadily increased (Ex. No. 17, page 7, lines 4, 13; R. 2390). It is, in spite of this continuous overall increase, however, that PG&E schedules sharp declines in its purchases of California gas, starting in 1967, the first full year for which PG&E seeks additional imported Canadian gas supplies (Ex. No. 17, page 7, line 13; page 9, line 14; R. 2390, 2392; Ex. No. 25; R. 2825).

In order to create the "market" which the Commission says "exists" for the importation of the additional authorized supplies of Canadian gas, PG&E schedules a reduction of 106,400 Mcf per day in its California gas purchases in 1967, compared with 1963. This amount is just enough, in PG&E's calculations, to justify commencing its additional Canadian gas importation of 100,000 Mcf per day in the winter of 1966. If, instead, PG&E's California gas purchases were maintained at the present 1963 - 1964 level, there would be no need for starting PG&E's additional importations of Canadian gas before the winter of 1967 - 68.

PG&E arrives at its conclusions by basing its estimates of future northern - central California dry gas as including "only that gas

which was under contract, or which could reasonably be expected to be under contract" at the time PG&E's estimate was prepared in March 1965 (Haavik, R. 774). These estimates include gas available from all of PG&E's then connected wells, and the gas available from a number of "unconnected wells" based on contracts in the process of negotiation to the extent that the wells would be connected by "the end of the year" or would "come under contract by the end of the year". These were reflected in PG&E's estimates. However, while PG&E projected the available supplies of gas from March through December of each year (reflecting the period of time from the date of actual preparation of estimate through the end of the year), *PG&E's estimates did not take into account any future projected unconnected wells after December 31, 1965* (Haavik ; R. 835 - 838, 924 - 928).

On this basis, PG&E's future forecasts are completely unrealistic.

First, PG&E's future forecasts of available California gas are completely unrealistic in ignoring any future discoveries of California gas.

Second, PG&E's methods of estimating available supplies of northern California gas are completely inconsistent with the methods for estimating available gas supplies used by PG&E's Canadian witnesses and by the Pacific Lighting Companies in southern California.

Third, all of PG&E's past estimates of available supplies of northern California gas have been completely unreliable as a basis for scheduling additional purchases of out-of-state gas.

It is the position of the California gas producers that, there will, in fact be a much larger supply of California gas than forecast by PG&E. This, the California gas producers assert, must be taken into account in determining the necessity for additional importations of Canadian gas starting in November 1966.

1) PG&E's Future Forecasts of Available California Gas are Completely Unrealistic in Ignoring any Future Discoveries of California Gas.

In this proceeding, under cross-examination PG&E's gas supply witness Haavik described in detail the method which he used in making his future estimates of PG&E's northern California gas purchases.

(a) California Produced Oil Well Gas Estimates

First, estimates were made for future available supplies of California produced *oil well gas*. These estimates included expected supplies of gas from the Brentwood, San Ardo, Vallecitos, and Kettleman Hills fields. In each instance, Mr. Haavik estimated that PG&E would be able to purchase the same amount of gas from these sources, *without decline*, in 1966, 1967, 1968, 1969, and 1970. (Haavik, 888); Ex. No. 28, p. 8; R. 2835).

In making these estimates of future oil well gas supply to PG&E, PG&E witness Haavik stated that it was a "reasonable assumption" that "the production would continue into the near future as it had prevailed currently" (Haavik; R. 888). In scheduling future oil well gas purchases, Mr. Haavik made the assumption that peak day gas supply available to PG&E from oil well gas sources at the "current level of estimated gas purchases by PG&E could be continued through January 1, 1971 and relied on to that extent for peak day gas supply" (Haavik; R. 890-891).

(b) Oil Company Use of Own California Produced Gas

Second, estimates were made of future *oil company use* of the available California produced gas transported (or "exchanged") across PG&E's integrated system. Except to reflect Standard Oil's decision to sell its Kettleman Hills gas to PG&E, starting in 1966 (instead of having it "exchanged" or transported by PG&E for Standard's account), in each instance, Mr. Haavik estimated that

the oil companies would have the same volume of gas available for PG&E to transport, *without decline*, in 1966, 1967, 1968, 1969, and 1970 (Haavik, Ex. 28, page 6; R. 2832).

(c) San Joaquin Valley Dry Gas Estimates.

Third, estimates were made for future available supplies of dry gas to PG&E from various sources in the San Joaquin Valley. These sources included supplies of gas from Buena Vista, Dudley Ridge, Gill Ranch, Hollister, and Moffat Ranch sources (Ex. No. 28, page 7; R. 2833).

In contrast to witness Haavik's treatment of the other San Joaquin Valley dry gas fields showing a field-by-field decline basis, Mr. Haavik estimated that PG&E's available supplies of gas from the Buena Vista Field would remain at the *same level* for the entire 1965-1970 period (Ex. No. 28, page 7; R. 2833).

In sum, it is only in contrast with the "reasonable assumption" that available supplies of oil well gas, oil company "exchange gas" and Buena Vista Field dry gas, would continue to be available both to PG&E and the northern California oil companies (Shell, Standard, and Tidewater) at the same volume level, throughout the forthcoming 1966 - 1970 period that PG&E's witness Haavik estimated sharp drop-offs in PG&E's forecast purchases of northern California *dry* gas.

2) PG&E's Methods of Estimating Available Supplies of Northern California Gas Are Completely Inconsistent With the Methods for Estimating Available Gas Supplies Used by PG&E's Canadian Witnesses and by the Pacific Lighting Companies in Southern California.

In order to put PG&E's declining estimates of available northern California dry gas purchases (based on a complete cessation of discoveries of gas) into perspective, the contrasting basis used in estimating future available gas supplies by PG&E's Canadian witnesses, and the Pacific Lighting Companies must be considered.

(a) PG&E's Estimates of Future Alberta Discoveries

PG&E's unwillingness to estimate future discoveries of northern California gas may be contrasted with the position of its witnesses testifying on behalf of Alberta and Southern Gas Co., Ltd. (PG&E's wholly-owned Canadian subsidiary purchasing gas from the Alberta producers).

As a result of the July 1964 proceedings before the Alberta Oil and Gas Conservation Board, the Board estimated the established reserves of marketable gas in the Province of Alberta, as of June 30, 1964, to be 35.7 trillion cu. ft., some 3.4 trillion cu. ft. representing reserves "presently considered to be beyond economic reach". The Board found that to June 30, 1965, the cumulative average growth in initial marketable reserves of gas due to new discoveries and to appreciation of previous discoveries to have been at a "long-term rate" of some 2.5 trillion cu. ft. per year. (Over the past two years, the Board observed, the annual rate has been "very slightly in excess" of the long-term rate, being 2.6 trillion cu. ft.). The Board expressed its confidence that the Province might reasonably count upon additional reserves in the amount of 5.0 trillion cu. ft. — equivalent to those that would be developed in a two-year period at the long-term growth rate.

In support of this finding, the Board summarized the testimony of the Alberta and Southern (PG&E) witness Blair, saying that a reserve growth rate for the Province of some 2.5 trillion cubic feet per year could be counted on for several years into the future (Report on the Applications of Trans-Canada Pipe Lines Limited and Alberta and Southern Gas Co. Ltd. under the Gas Resources Preservation Act, 1956, by Oil and Gas Conservation Board, Calgary, Alberta, Canada, November 1964; Ex. No. 22; Appendix B, pages B2 - B4; R. 2692 - 2694).

In addition the Federal Power Commission Presiding Examiner in the previous 1960 decision approving PG&E's initial imports of

Gas from Canada said that "the Commission, of course, dealt with "reasonable probabilities" and considered the trends in gas discovery in reviewing the "adequacy of gas reserve showing" (citing *Texas Gas Transmission Corp.* 8 FPC 190, 199 (1949) and *Transwestern Pipeline Company*, 22 FPC 391 (1959)). In recommending approval of PG&E's initial import volumes in 1960, the Presiding Examiner pointed out that: "There is no question but that the trend is toward the addition of very substantial quantities of gas in Alberta each year during the foreseeable future". It was only on this basis that the Presiding Examiner, and later the Commission, concluded that PG&E's project had "fully adequate" reserves and availability to supply the project (24 FPC 144, 148-149). The Commission adopted this portion of the Presiding Examiner's decision as part of its final order of approval (24 FPC 134, 135).

It is crystal clear that in order to secure a permit to remove the necessary quantities of gas from the Province of Alberta for importation into northern California, PG&E presented precisely the type of evidence — indicating the probability of future gas discoveries in Alberta — which as to major supplies of northern California dry gas it refused to present here.

**(b) Pacific Lighting Companies Estimates of
Southern California Gas.**

In its present Canadian import application proceedings, PG&E estimates its present and future supplies of northern California gas, as showing a sharp decline in availability, dropping from a present level of about 630,000 Mcf per day to only 328,200 Mcf per day by 1970 (Ex. No. 25; R. 2825). This is in sharp contrast to the Pacific Lighting Companies estimates of future available supplies of California produced gas (including both oil well gas and dry gas) in southern California, which show no such decline (Haavik; R. 881-882).

The difference is that in estimating available supplies of northern California dry gas for import certificate purposes, PG&E

does not take into account any new discoveries after December 31, 1965, thus excluding all new field discoveries, as well as any field reserve revisions since that date. The Pacific Lighting Companies, on the other hand, use a 1953-1962 10-year production trend which necessarily includes estimates of new discoveries based on past experience. In addition, the Pacific Lighting Companies make specific estimates of the availability of gas from pressure maintenance, or gas injection, projects which are expected to be terminated in the next few years. (Beyond 1970, the Pacific Lighting Companies have also estimated available supplies of California gas from off-shore sources beyond the present three-mile limit.)

As the Federal Power Commission said, as recently as July 26, 1966 in discussing the demand and supply for gas in *southern California (Re Transwestern Pipeline Company, et al., Opinion No. 500, page 22)*:

"To these available supplies must be added an allowance for gas received from California sources. Pacific Lighting provided extensive evidence on this question. As Pacific Lighting shows, most of the gas from California production is oil-well gas and is subject to the contingencies of oil production. Pacific Lighting's witness studied individual fields, and, making his estimates for the years 1966 through 1970, he included future volumes available under existing contracts and under those which are currently the subject of negotiations with producers. *Total supply from all other sources considered to be available in 1965 was trended to obtain the estimated volumes for subsequent years. This trend is designed to reflect both normal decline in production and the addition of new sources of gas.* In addition the witness included for 1968 and later years an estimate of supplies to be obtained from currently operative gas injection projects.

On this basis the witness estimated the supply from California sources to be 228 M³cf in 1968 and 221 M³cf in 1970" (Emphasis supplied).

It is exactly PG&E's refusal to recognize that these future additional supplies of northern California dry gas will be available to meet PG&E's future needs that provides the basis for its contrasting estimate of a sharply declining supply of California produced gas.

In an area in which PG&E in fact purchases 95% of the available gas supply, the delivery of any additional gas supply to the area, *pro tanto*, reduces PG&E's forecast increased market requirements. (Ex. No. 17, page 5, line 28, column (f); R. 2389).

In the usual FPC proceeding, in which a natural gas transmission pipeline company is required to purchase its gas supply in competition with other natural gas transmission pipeline company purchasers, the Commission's policy of requiring a contracted-for 20-year supply is appropriate. Thus, in "proving-up" its Canadian gas supplies, purchased in competition with purchases by West-coast Transmission, Trans-Canada, and local Alberta gas distribution companies, it is requisite for PG&E to show a contracted-for supply sufficient to meet the Commission's gas reserve and deliverability requirements.

Such "contracted-for criteria, however, cannot properly be applicable in a gas purchase area in which: (1) there is, for all practical purposes, only one potential gas purchaser, and (2) any sales of additional gas in the producing area would, *pro tanto*, reduce the area's overall market requirements for gas. In such an instance, if no cognizance were to be taken of future expected gas supplies, it would be easy enough for an applicant before the FPC (like PG&E) to "manufacture" its indicated requirements for additional out-of-state gas supplies by merely refusing to con-

tract for local gas supplies at hand.

3) All of PG&E's Past Estimates of Available Supplies of Northern California Gas Have Been Completely Unrealistic and Unreliable As a Basis for Scheduling Additional Purchases of Out-of-State Gas.

In order to demonstrate the extent to which PG&E's previous estimates of northern California dry gas, prepared on the premise that there would be no future discoveries of dry gas in northern California, were unrealistic and unreliable, the California gas producers presented Mr. Harold H. Heidrick, formerly Head of the Gas Section of the California Public Utilities Commission at the time of PG&E's previous 1960 application to that Commission (and the FPC) for authorization to construct and operate the present PG&E Canadian line.

Mr. Heidrick stated that, in contrast to the pro-forma presentation of the California Commission in these proceedings (covering only two minor points concerning Pacific Gas Transmission's allowable rate of return and depreciation salvage credit), in the 1960 proceeding the California Commission Staff had presented a detailed gas supply and requirements exhibit for northern California, considering California supplies, out-of-state supplies, and other available means of using peaking gas. In that study, Mr. Heidrick stated the California Commission's Staff had estimated that California gas production would continue up to 1970 at a constant rate "maintaining the same (1959-1960) level". No such study was made by the California Commission and made a matter of record in the present proceedings (Heidrick; R. 1496 - 1497).

In contrast to the California Commission's estimate of a future supply of California gas at the "same level" (and PG&E witness Haavik's estimate of a decline in the deliverability of northern California gas) in the intervening six years, production of northern

California gas has "actually continued its upward trend" (Tr. Heidrick; R. 1496 - 1497).

(a) Unreliability of Previous PG&E Estimates

In his testimony concerning the reliability of past PG&E estimates of northern California gas purchases, Mr. Heidrick compared PG&E's estimates of northern California gas supplies as presented in other previous proceedings with the actual amounts of northern California gas available on the estimated dates. These comparisons, he said, covered PG&E estimates of northern California gas supplies presented in the previous 1960 proceedings before this Commission when PG&E sought authorization for original construction of its Canadian line, as well as annual estimates which PG&E is required to submit to the California Public Utilities Commission (Heidrick, R. 1452).

In making these comparisons, Mr. Heidrick said that PG&E's estimates of northern California gas supplies fell short of actual purchases in the estimated future years, in each instance, the difference being greater in the more distant future years. Thus, Mr. Heidrick pointed out that PG&E's estimates for the first year or so in the future were "relatively close" to its actual purchases in that year. For other future years, the difference, he said, became "progressively greater", and PG&E's estimates of future northern California gas purchases more than two or three years in the future fall "sharply below the amounts of northern California gas actually purchased in an individual year" (Heidrick; R. 1454).

**PACIFIC GAS AND ELECTRIC COMPANY
COMPARISONS OF ESTIMATED (1960 - 1970) AND
ACTUAL (1960 - 1964) NORTHERN CALIFORNIA GAS PURCHASES**

ANNUAL PURCHASES (Bcf)				
Year Estimated	1960 Canadian Application Proceedings	1962 Calif. Gas Report	1963 Calif. Gas Report	1964 Calif. Gas Report
1964				
Actual Purchase (Dry)	217.8	217.8	217.8	217.8
1964				
Estimated Purchase (Dry) adjusted for Oil	84.4	167.1	204.7	215.9
Estimated as Percent of Actual	39%	77%	94%	99%

Source: Heidrick, Ex. No. 50 (R. 2884).

The reason for this widening difference, Mr. Heidrick said, was accounted for by the fact that PG&E's estimates of future PG&E purchases of northern California (or Northern Central) dry gas "includes only that gas which was under contract, or which could reasonably be expected to be under contract at the time the estimate was prepared". As a result for any time in the future, PG&E's methods of estimating future supplies of northern California dry gas "substantially underestimate" the supply of northern California dry gas that actually became available. In the original 1960 Canadian import proceedings before both the California Public Utilities Commission and the Federal Power Commission, PG&E estimated that the amount of northern California dry gas would

amount to 84.4 billion cu. ft. in 1964. Compared to this estimate, in 1964, PG&E actually purchased 217.8 billion cu. ft. of northern California dry gas, *over 2½ times as much as it estimated in 1960, its 1960 estimate amounting to less than 40% of the gas which actually became available 4 years later.* Instead of an estimated average of 231,000 Mcf per day for 1964 upon which PG&E based its application to the Federal Power Commission in 1960, PG&E actually purchased a total of 624,000 Mcf per day in that year — the last year for which actual annual data are available (Heidrick, R. 1455 - 1456).

In 1962, two years later, PG&E again substantially underestimated the amount of northern California dry gas which would actually be available for purchase. PG&E's estimate for that year was 167.1 billion cu. ft., or about 458,000 Mcf per day, its estimated 1964 northern California dry gas supply having *doubled* in that two-year period. Nevertheless, this doubled estimate fell far short of the actual available supply of northern California dry gas amounting to about 624,000 Mcf per day actually available in 1964. It is only when PG&E limited its estimates of northern California dry gas supplies to a year or so in advance have PG&E's estimates been even close to the actual.

(b) Contrast With PG&E Permian Basin Case Estimates.

In the *Permian Basin Area Rate Proceeding* (Docket No. AR61-1, et al., December 1961) before the FPC PG&E's witness Frank presented an estimate of the supply and demand for gas in northern California.¹ As to the available supply of northern California gas, Mr. Frank stated that (Heidrick; R. 1457 - 1958):

"California Dry Gas

"New discoveries of California dry gas are assumed to offset depletions through 1970. This assumption results

¹ Mr. Harold Z. Frank was also a witness in the present Canadian import proceedings (Frank; R. 1219-1220).

in a peak supply of 1140 M²cf per day. The annual amount that northern California companies will be obligated to take is estimated at 170,000 M²cf in the year 1970 which amount approximates the current level. (Emphasis supplied).

"California Oilwell Gas

"This gas is produced in conjunction with oil production and is independent of gas demand. *The 25,014 M²cf production estimated for 1970 is the same as the present production.*" (Emphasis supplied)

In every year since Mr. Frank's estimate was made in the latter part of 1961, the production of northern California gas taken has in fact substantially exceeded even Mr. Frank's estimate (Heidrick; R. 1460):

"... PG&E's policy in these proceedings of excluding all consideration of future discoveries, extensions, and revisions of estimated reserves of northern California dry gas has meant consistently underestimating the amount of northern California dry gas which has actually become available. While PG&E's estimates for current and near-by years are relatively accurate, in the years further into the future, the estimates become progressively unreliable, resulting in estimates as low as only 45% of the gas which has actually become available. The basis of estimating used by PG&E's witness Frank in the Permian Basin "area rate" proceeding, in which current production of northern California dry gas is offset by future discoveries, extensions, and revisions of such reserves has proved to be much more accurate even though it was based on conditions as far back as December, 1961."

Based in the pragmatic test of PG&E's previous northern California gas estimates against the actual availability of northern

California gas supply, it is clear that as a result of PG&E's policy to ignore the possibility of any future discoveries of northern California dry gas all of PG&E's past estimates of available supplies of northern California gas have been completely unrealistic and unreliable as a basis for scheduling additional purchases of out-of-state gas. Since the same basis for estimating such supplies was used in these proceedings, there is no reliable basis, using PG&E's estimates, upon which to schedule the receipt of additional Canadian gas supplies into northern California starting in November 1966.

4) Production and Reserves of Gas in Northern California Have Consistently Increased Over the Past 10 Years

In contrast to the pessimistic point-of-view taken by PG&E's gas supply witness that no reliance of any kind could be put on the possibility of future discoveries of natural gas in northern California after December 31, 1965, the facts are that over the past ten years there has been a dramatic increase in the production and reserves of natural gas actually discovered in northern California. Nothing in the record indicates any basis for the sharp "cut-off" used by PG&E as a basis for its estimates for the importation of additional Canadian gas starting in November 1966.

Based on these estimates, PG&E witness Haavik agreed that the "most encouraging" availability of gas based on past trends had been the availability of reserves for "non-associated" gas, this non-associated category being the principal source of PG&E's California gas supply (Haavik; R. 842-843). In fact, in each of the past 5 years for which PG&E witness Haavik had made estimates, available supplies of northern California dry gas have been in excess of the previous year. Mr. Haavik stated that it was "probable" that PG&E's estimate of the California gas supply would, in fact, be greater in 1966 than it was at the time PG&E's estimates were presented to the FPC (Haavik, R. 839).

Yet, compared to this continued actual increase in northern California dry gas production and reserves in the past 10 years, PG&E estimated purchases of northern California dry gas in 1965-1970 reflecting estimates to cut-back its purchases of northern California dry gas sharply, thus increasing the life-index of the remaining dry gas, and providing a "captive" cushion of gas always at hand in PG&E's "back-yard" (Haavik, Ex. No. 17, page 5; R. 2389).

In contrast, both of the witnesses presented on behalf of the California gas producers agreed that, instead of the sharp declines of 13% - 16% per year which PG&E's witness Haavik forecast for PG&E's future supplies of northern California dry gas, these sources of California produced gas could be relied on for several years to come at approximately the present level of production (Fazio; R. 1363):

"... at least for the short period, 1965-1968, for which PG&E is seeking to import additional supplies of natural gas from Canada, PG&E should appropriately rely on maintaining the latest 1964 current level of northern California dry gas purchase of 217.8 Bcf per year (597,000 Mcf per day), before determining to import additional supplies of natural gas from Canada. In addition to this supply of northern California dry gas, PG&E's future estimated supply of California produced gas from other sources ... should be added, if a realistic appraisal is to be made of the need for importing additional supplies of Canadian gas into northern California during the current 1966-1968 period. This would provide a total estimated supply of northern California dry gas and other (oilwell) gas of approximately 630,000 Mcf per day at least through 1968."

As has been previously shown, the adoption of such a current continued level, of about 630,000 Mcf per day, for PG&E's pros-

pective California produced gas purchases of 1966, 1967, 1968 would be equivalent to adding 106,400 Mcf per day of additional California produced gas to PG&E's estimated supply in 1967, and an even greater amount in 1968 (Ex. No. 25; R. 2825). *Such an additional amount would be more than enough to warrant deferment of PG&E's proposed purchases of additional supplies of Canadian gas from November 1966 to November 1967, or later.*

Based on the data of record in this proceeding there is no basis for the Commission's finding that a "market exists" for the importation of the additional supplies of natural gas by PG&E from Canada starting as early as November 1, 1966, as the Commission authorized in its decision (Finding (6), page 6; R. 5263).

II) THE COMMISSION FAILED TO ADEQUATELY CONSIDER THE AVAILABILITY OF ALTERNATIVE SUPPLIES OF NATURAL GAS FROM EL PASO NATURAL GAS COMPANY OR TRANSWESTERN PIPELINE CO.

In its decision in this case, the Commission's opinion states that the "record" in the case does not demonstrate that "alternative methods" exist for providing the needed volumes of additional gas at "more advantageous" rates and conditions (citing the *Rock Springs* case). In making this statement, the Commission conveniently ignores the fact that it was precisely the rulings of the Commission's Presiding Examiner, and the Commission itself which prevented making this information a matter of record (Cf. Order Denying Reconsideration issued December 17, 1965; R. 4890 - 4893) (Opinion, page 3; R. 5259).

In these proceedings, the State of Texas and TIPRO (supported by the California gas producers, and IPAA) sought to have incorporated as a matter of record in this proceeding certain testimony and exhibits introduced by El Paso's chief pipeline construction witness in the *Gulf Pacific* proceeding (Hunsaker, Ex. No. 56 (testimony); R. 2920 - 2933, and Ex. No. 57 (exhibit);

R. 2934-3032)). This testimony showed exactly the facilities, the cost, and method of delivering an additional 250,000 Mcf per day of natural gas by El Paso Natural Gas Company to PG&E's facilities on the Arizona-California border, using additions to El Paso's "existing" pipeline system.

Not only did this testimony cover an "alternative" means of delivering a 25% *greater supply* of natural gas to PG&E, the ultimate purchaser in the present proceeding, but it proposed to do it at a *lower delivered price* by securing additional throughput over *existing* El Paso lines. Thus, the comparison which would have been posed to the Commission for consideration would have been a direct one: Which of two existing natural gas transmission pipeline systems supplying PG&E should be increased in order to provide the additional deliveries of natural gas sought by PG &E in these proceedings?¹

1) Additional Supplies of El Paso Gas are in Fact Available to PG&E Without the Construction of Any Additional Out-of-State Facilities

Before making any determination of the necessity of importing additional supplies of Canadian gas, it must be recognized that substantial additional supplies of El Paso gas are, in fact, available to PG&E, without the construction of any additional facilities either outside, or within, the State of California. In

¹ That such additional supplies of natural gas by El Paso from west Texas sources are available even today is apparent from the recent testimony of El Paso's President Boyd before the FPC (*Re El Paso Natural Gas Company* (Westcoast Transmission import proceeding), Docket No's G-8932, CP66-315, September 20, 1966, Tr. 247). In addition to the volumes recently certificated in the *Gulf Pacific* proceeding, Mr. Boyd said that El Paso had "additional availability of natural gas to California" on El Paso's system out of the Permian Basin. There was he said, "easily" 100,000 Mcf per day "available out of there "now", as a "floor" without any "ceiling" as to the amount which might be available. The area, he said, "has to be subject to further development . . . and is one of the hottest areas in the United States today". Mr. Boyd emphasized that "there is probably more money being spent there by producers than any other single area in the United States". This area, he said, "can be a huge source of future discovery".

addition the California border price of these additional El Paso supplies is lower than the incremental cost at the California border of the additional Canadian supplies which PG&E is asking authority to import.

In PG&E's gas supply study, PG&E's gas supply witness included only 1,020,300-1,035,300 Mcf per day for deliveries of gas available to PG&E from El Paso (Ex. No. 17, page 9, line 17; R. 2392). The fact of the matter is that El Paso gas is available in much greater quantities, and these greater quantities *over existing facilities* should be taken into account before consideration is given to authorizing additional imports of natural gas from Canada, requiring vast new expenditures totalling \$ 29,947,000 for natural gas transmission pipeline facilities (Blasdale; R. 1326 - 1330; Ex. No. 45).

The uncontradicted testimony in this proceeding shows that El Paso's existing deliveries to PG&E, the Pacific Lighting Companies, and the two companies combined, have been well in excess of the contract delivery volumes (Ex. No. 46; R. 2880).

To date, as recently as July 29, 1965, El Paso's deliveries to PG&E reached 1,144,811 Mcf per day, 119,811 Mcf per day in excess of the level for which PG&E estimated its continuing purchases of El Paso gas in 1966, 1967, 1968, and subsequent years (Ex. No. 46 R. 2880). In fact, on February 26, 1965, El Paso's total capacity deliveries to California were 2,441,802 Mcf. After subtracting the Pacific Lighting Companies' entitlement of 1,130,000 Mcf per day of "basic" gas (Rate Schedule G) and 100,000 Mcf per day of "interim" (semi-firm) gas (Rate Schedule G-1), this leaves capacity for deliveries of 1,211,802 Mcf per day to be made by El Paso to PG&E (at the same Topock-Needles delivery point on the Arizona-California border). After deducting PG&E's "basic" contract supply of 1,025,000 Mcf per day, this indicates additional El Paso capacity of 186,802 Mcf per

day available to meet PG&E's needs — over and above the minimum "basic" contract volumes of 1,025,000 Mcf per day used in PG&E's gas availability estimates (Ex. No. 46; R. 2880, Ex. No. 17, page 9, line 17; R. 2392). *This amount is virtually equal to the 200,000 Mcf per day of Canadian import authorization which PG&E is seeking in this proceeding.*

In addition to this, PG&E's statements to El Paso and the Commission indicate that PG&E's existing Topock-Milpitas system for the receipt of El Paso gas within the State of California can carry 72,000 Mcf per day of additional deliveries without *any* additional facilities (Application of El Paso Natural Gas Company, Docket No. CP65 - 45, filed August 10, 1964). The receipt of additional deliveries from El Paso, above and beyond these volumes (1,037,000 Mcf per day plus 72,000 Mcf per day, or a total of 1,109,000 Mcf per day) is also possible, since PG&E has in fact received up to 1,144,811 Mcf per day from El Paso as recently as July 29, 1965 (Ex. No. 46; R. 2880).

As a matter of fact, at the present time, in order to get rid of PG&E's "excess" supplies of El Paso gas, PG&E sold 100,000 Mcf per day of its El Paso deliveries to the Pacific Lighting Companies in southern California on a firm basis. These firm deliveries stopped October 31, 1966, and this additional El Paso supply has again become available to PG&E (Moulton, R. 1732, Ex. No. 63; R. 3054 - 3056).

Furthermore, there is no question from the evidence of record that additional supplies of such El Paso gas are available to PG&E at a lower price at the Arizona-California border (El Paso Rate Schedules G, G-X, 22.22¢ per Mcf, Item D, R. 3091-3094; Transwestern Rate Schedule LX, 21.00¢ per Mcf, Item F, R. 3110) than the cost of PG&E's Canadian supplies at the Oregon-California border (1968, 23.33¢; 1969, 24.03¢; 1970, 24.47¢ per Mcf, Blasdale Ex. No. 19, p. 2; R. 2411).

Certainly, the availability of this additional capacity and supply of gas to PG&E over PG&E's and El Paso's existing system, available without any expenditure for out-of-state facilities should be considered before authorization is granted by this Commission to import additional supplies of gas to California which will be the areas' requirements.

Thus, in contrast to the over \$29 million that would have to be spent by PG&E to secure the additional requested supply of Canadian gas, PG&E would have to make *no additional investment* of any kind to receive the benefit of such existing unused capacity in El Paso's lines.

Under these circumstances, no justification exists for PG&E's initiating its planned importation of Canadian gas as early as November 1, 1966 as long as capacity already exists to supplement deliveries from El Paso's existing installed natural gas transmission line sources.

2) The Actual Delivered Cost of the Additional El Paso and Transwestern Gas Would be Less Than the Estimated Incremental Cost of PG&E's Additional Proposed Canadian Supplies

In its testimony, PG&E indicated that the delivered cost of its Canadian gas supplies at the Oregon-California boundary is (Blasdale, Exhibit 19, page 4, lines 12, 24, 25; R. 2413):

	1966	1967	1968	1969	1970
Average Cost	32.39¢	31.14¢	30.96¢	31.13¢	31.11¢
Incremental Cost	—	—	23.33¢	24.03¢	24.47¢

This is not the delivered price of PG&E's Canadian gas at its Antioch, California, load center (on the Sacramento River) used as a basis of comparison in the previous, initial, PG&E Canadian certificate proceeding (*Re Pacific Gas Transmission Company*, 24 FPC 132, 164-165 (1960)), but is the delivered

cost at the Oregon-California border, approximately 300 miles north (Brooks, Exhibit 9, page 3, (Map); R. 2330).

Compared to this, the delivery point of "alternative" supplies of El Paso gas to PG&E at the Arizona-California border (the furthest point away at which El Paso gas would be available) is also about the same distance from PG&E's Central Valley (Bakersfield-Fresno) market (Heidrick, Exhibit No. 47; R. 2881). Deliveries of Transwestern gas by the Pacific Lighting Companies at the Pacific Lighting-PG&E main line cross-over point near Barstow would be even closer (Heidrick, R. 1446). The other interconnection points between the Pacific Lighting and PG&E systems lie throughout the common Central Valley system area of both companies as far north as Fresno (Heidrick Ex. No.s 47 - 49; R. 2881 - 2883).

Representatives of El Paso and Transwestern estimated in the Gulf Pacific case that when the Commission's *Permian Basin Area Rate* decision is made effective (Opinion No. 468, issued August 5, 1965, now stayed on appeal to the Court of Appeals for the Tenth Circuit), there will be a reduction of over 1¢ per Mcf in the delivered Arizona-California border price of their gas. This would indicate a competitive commodity price for gas delivered to PG&E of:

El Paso	Excess Gas Service (G-X)	21.22¢ per Mcf
Transwestern	Limited Excess Gas (LX)	20.00¢ per Mcf

Compared to the cost of PG&E's added deliveries of Canadian gas at the Oregon-California border at between 23.33¢ - 24.47¢ per Mcf (Blasdale, Exhibit 19, page 2; R. 2411) the reduced cost of the available El Paso Excess Gas Service (Rate Schedule G-x) deliveries at 21.22¢ per Mcf and Transwestern Limited Excess Gas Service (California) (Rate Schedule LX) at 20¢ (and 23¢) per Mcf is $3\frac{1}{4}$ - $4\frac{1}{2}$ ¢ less than the cost of the additional Canadian gas which PG&E proposes to import. In addition, these Trans-

western and El Paso "Excess" gas service deliveries will be available at little or *no* additional cost to PG&E, compared to the \$13,837,000 of additional facilities required to receive the added Canadian gas deliveries. (See Comparison of Delivered Cost of Gas to PG&E at California Border, Appendix "C", attached.)

The availability of such an alternate source of natural gas from El Paso at a cost between 20½¢-22½¢ per Mcf is a matter of record in the proceedings, being set forth in a Memorandum on the Comparative Costs of Additional Out-of-State Gas prepared by PG&E's chief policy witness (Moulton, Ex. No. 64, Table 3, Col. 2; R. 3061).

At no place on the record, either by the Presiding Examiner, the parties, or by the Commission itself, is any examination, or analysis made of this definitive alternative. It is the California gas producers contention that under the law as it now stands the Commission must make some analysis of the alternatives presented to it if it is to discharge its responsibilities to the consumers of natural gas under the terms of the Natural Gas Act.

This not only has the Commission, its Presiding Examiner and its Staff failed to do, but it has shown a decided distaste to even recognize that any such issue exists. Unfortunately, in the circumstances presented here, the Commission cannot merely sweep this issue "under the rug" in the hopes that if it is not mentioned, it will "go away". A decision, difficult as it may be, must be made if the Commission's responsibilities are to be discharged.

After shutting off consideration of any such testimony, the Commission then seeks to justify its decision by citing the lack of any such testimony or evidence as a matter of record in reaching its decision! It is from this action that the California gas producers appeal.

3) Under Commission Precedents, It is Sufficient that "A More Desirable Alternative" be Present to Make Its Consideration Relevant and Material

The Commission's statement that "the facilities for bringing this gas (via El Paso) to California . . . are not now available, nor can they be available for some time" (Opinion, page 4; R. 5260) is not sufficient to take the case out of the rule announced by the Court of Appeals in the *City of Pittsburgh* and *Consolidated Edison* cases that the existence of a "more desirable" alternative must be considered by the Commission in rendering its decision. It is demonstrably certain, in the whole course of the Commission's conduct, culminating in its Opinion here, that no such consideration was given.

The thrust of the Commission's decision is that while arguments as to the adequacy and availability of "alternative methods" of securing any needed additional supplies of natural gas are relevant in determining whether to certificate a new pipeline project (such as PG&E's initial Canadian pipeline), they are not "appropriate" in determining whether "existing" pipeline facilities should be used to deliver additional quantities of gas. This, of course, is not the law, since each certificate application before the Commission is required to be tested against the standard of the "public convenience and necessity", whether that application is for a wholly new natural gas pipeline project, or merely for the expansion of an existing pipeline. While the fact of alternative economics, and "incremental" vs. "average" costs may be involved in a different factual way in an expansion program, as distinguished from a new natural gas transmission pipeline certificate application, the necessity of weighing the "alternative methods" available still remains.

Even if a pipeline is once built, it does not mean that the Commission can dispense with a critical examination of the need

to expand the line, especially where lower cost "alternative methods" may be available. The Commission's theory, carried to its ultimate conclusion would mean that consumers were saddled with the cost of expanding an already installed pipeline even if lower cost supplies (lower than even the "incremental" costs of delivery Canadian gas) were available. It is precisely this proof which TIPRO, IPAA, the State of Texas, and the California gas producers sought to present in the proceedings, and which has been first denied, and then "swept under the rug" by the Commission in its decision.

In support of its refusal to consider any "alternative means" of delivering the same supplies of gas to PG&E from domestic sources, the Commission cites only its previous decision in the *Rock Springs* case (*Re El Paso Natural Gas Company, et. al.*, 30 FPC 77 (1963)) (R. 5259).

Contrary, however, to the Commission's assertion that in the *Rock Springs* proceeding the "record" provided the basis for alternative means of serving California not available in these proceedings, no competing applications existed upon which the Commission could base its opinion. There, as here, the Commission had to make its determination rejecting El Paso's Rock Springs project proposal on the basis of evidence as to (30 FPC at pp. 85-88):

- (1) "One alternative route . . . involves the use of Transwestern's pipeline, which now receives gas from the Panhandle area and the Permian Basin area and delivers it to Pacific Lighting . . . "
- (2) "Transwestern also produced evidence showing that it could either transport 237,500 Mcf per day of CIG's gas and the additional 237,500 Mcf per day from El Paso . . . "

- (3) "Another alternative indicated by the record evidence would employ the northern segment of El Paso's Southern Division . . . utilizing the existing exchange agreement between El Paso Northern Natural Gas Company . . . "
- (4) "As the Examiner points out, this gas could be delivered by El Paso in the same way it proposed to to deliver 2000,000 Mcf per day to Pacific Gas and Electric Company . . . "
- (5) "The Staff introduced evidence as to a further alternative. This would involve use of the line of Pacific Gas Transmission Company and PG&E would approximately double the present capacity of 450,000 Mcf per day."

The essential difference between the *Rock Springs* case, and the present one is that in the *Rock Springs* case an active FPC Staff definitively explored the alternative methods of rendering the same service. In this proceeding, the FPC Staff did *nothing* to discharge its duty to present feasible alternatives to the Commission. On top of this, both the Presiding Examiner, Commission Secretary, and the Commission itself took every opportunity to shut off any consideration of testimony along these lines sought to be presented by the State of Texas, TIPRO, IPAA or the California gas producers.

After shutting off consideration of any such testimony, the Commission then seeks to justify its decision by citing the lack of any such testimony or evidence as a matter of record in reaching its decision!

This complete dismissal of any inquiry into any possible "more desirable alternatives" in this case may be contrasted with the next case to come before the Commission involving additional

imports of gas from Canada — this time to expand El Paso and West-coast Transmission's existing pipeline in order to increase deliveries to the Pacific Northwest market (Washington, Oregon, and Idaho). There at the outset of the hearings the Commission itself, by order, specified that "alternative" means of supplying the same volume of deliveries should be made a matter of inquiry (*Re El Paso Natural Gas Company*, Docket No's G-8932, CP66-315, order issued June 24, 1966):

- "(1) Are there alternative means available to meet the needs of the Northwest customers which would be more preferable than the proposal herein?
- "(2) Is there a market at this time for the volumes of gas proposed to be sold and transported by El Paso?
- "(3) Is it in the public interest to permit El Paso to import the additional volumes of natural gas at the price proposed to be charged by Westcoast Transmission Company?
- "(5) Should a domestic pipeline rely upon Canadian reserves to the degree that is herein proposed or should restrictions be placed upon the importation of natural gas, in light of the facts in this case?"

In that case FPC Staff Counsel stated the FPC's official position that (Tr. 117 - 118, July 12, 1966):

"Mr. Harkaway: It may be IPAA, TIPRO or Texas or anyone else can come in and show gas is available and there are means to move it up to the Pacific Northwest area, which of itself, and notwithstanding that no certificate application has been submitted, would be a possible alternative which should be explored."

"If Your Honor will recall for example in the *Rock Springs* case of recent infamy, the Commission denied a

certificate to El Paso when it was shown on the record *through statements of various parties* there might be better alternatives, as admitted you remember by the parties themselves subsequently. The fact no certificate was filed in competition with the *Rock Springs* case at the time wasn't controlling, nor should it be controlling. This is what I have in mind, the possibility of a more desirable alternative presenting itself."

"This is something I think that must be explored on this record." (Emphasis supplied).

To this, the Presiding Examiner (the same Presiding Examiner as in the PG&E proceedings) said (Tr. 118, July 12 1966):

"PRESIDING EXAMINER: I agree with you there..."

Under both judicial and Commission precedents, it is merely sufficient that a "more desirable alternative" be present to make its consideration relevant and material. Thus, in *City of Pittsburgh v. Federal Power Commission*, 237 F. 2d 741 (D. C. Cir., 1956) ("Little Inch" abandonment proceedings), the Commission refused to receive certain evidence in the record stating that "it had no jurisdiction to consider any alternatives to the specific proposal made by the applicant" (14 FPC at p. 50). The Court of Appeals reversed, however, stating (237 F. 2d, at p. 751):

"The existence of a more desirable alternative is one of the factors which enters into a determination of whether a particular proposal would serve the public convenience and necessity. That the Commission has no authority to command the alternative does not mean that it cannot reject the proposal."

The application of this doctrine has been forcibly brought to the Commission's attention in the recent decision of the Court of Appeals in the *Consolidated Edison* case (*Scenic Hudson Pre-*

servation Conference, et al. vs. Federal Power Commission (Consolidated Edison Company of New York, Inc., Intervenor, 354 F.2d. 605 (December 29, 1965)). In that case, the Commission recognized that it "must compare the Cornwall project with any alternatives that are available." There is no doubt, the Court of Appeals said, that the Commission is under a statutory duty to give full consideration to alternative plans (citing *Michigan Consolidated Gas Co. vs. Federal Power Commission*, 283 F. 2d 204 224 - 226 (D. C. Cir., 1960), cert. denied 364 U.S. 913 (1960); *City of Pittsburgh v. Federal Power Commission*, 237 F. 2d 741 (D. C. Cir. 1956)). (354 F. 2d. at page 612 - 613; 617).

In the *Consolidated Edison* case, the Court criticized the testimony relied on by the Commission (as would be the case with the "offer of proof" of witness Hunsaker's testimony here), saying that it was "too scanty to meet the requirements of a full consideration of alternatives". There, as here, the Court remarked that "there was no significant attempt to develop evidence as to the . . . alternative" (354 F. 2d. at page 619, 620):

"Especially in a case of this type, where public interest and concern is so great, the Commission's refusal to receive the (Lurkis) testimony, as well as proffered information on fish protection devices and underground transmission facilities, exhibits a disregard of the statute and of judicial mandates instructing the Commission to probe all feasible alternatives."

* * * *

"In this case, as in many others, the Commission has claimed to be the representative of the public interest. This role does not permit it to act as an umpire blandly calling balls and strikes for adversaries appearing before it; the right of the public must receive active and affirmative protection at the hands of the Commission.

“This Court cannot and should not attempt to substitute its judgement for that of the Commission. But we must decide whether the Commission has correctly discharged its duties, including the proper fulfillment of its planning function in deciding that the ‘licensing of the project would be in the overall public interest’. The Commission must see to it that the record is complete. The Commission has an affirmative duty to inquire into and consider all relevant facts. See *Michigan Consolidated Gas Co. v. Federal Power Commission*, 283 F. 2d 204, 224, 226 (D. C. Cir.), cert. denied, 364 U.S. 913 (1960); *Isbrandtsen Co. v. United States*, 96 F. Supp. 883, 892 (S.D. N.Y. 1951), aff’d by an equally divided Court, 342 U.S. 950 (1952); Friendly, *The Federal Administrative Agencies*, 144 (1962); Landis, *The Administrative Process*, 36 - 46 (1938); cf. *City of Pittsburgh v. Federal Power Commission*. 237 F. 2d 741 (D.C. Cir. 1956).

As the Court in the *Consolidated Edison* case concluded, “the failure of the Commission to inform itself of these alternatives cannot be reconciled with its planning responsibility” (354 F. 2d at page 622). The same circumstances are apparent here.

SUMMARY AND CONCLUSION

In sum:

First, the Commission failed to consider Pacific Gas and Electric Company's estimated "cut backs" of California produced gas in order to provide a market for the proposed importation of Canadian gas.

PG&E's future forecasts of available California gas are completely unrealistic in ignoring any future discoveries of California gas after December 31, 1965.

In this regard, PG&E's methods of estimating available supplies of northern California gas are completely inconsistent with the methods for estimating available gas supplies used by PG&S's Canadian witnesses and by the Pacific Lighting Companies in southern California. In addition, all of PG&E's past estimates of available supplies of northern California gas have been completely unrealistic and unreliable as a basis for scheduling additional purchases of out-of-state gas.

In view of the fact that production and reserves of gas in northern California have consistently increased over the past 10 years based on the data of record in this proceeding, there is no basis for the Commission's finding that a "market exists" for the importation of the additional supply of natural gas by PG&E from Canada starting as early as November 1, 1966, as the Commission authorized in its decision (Finding (6), page 6; R. 5263).

Second, the Commission failed to adequately consider the availability of alternative supplies of natural gas from El Paso Natural Gas Company (or Transwestern Pipeline Company).

In this regard, additional supplies of El Paso gas are in fact available to PG&E without the construction of any additional out-of-state facilities. Not only would the actual delivered cost

of the additional El Paso and Transwestern gas be less than the estimated incremental cost of PG&E's additional proposed Canadian supplies, but under Commission precedents, it is sufficient that "a more desirable alternative" be present to make its consideration relevant and material.

Accordingly, in conclusion, it is the position of the California gas producers that the Commission decision in these proceedings must be set aside and new hearings ordered, in the light of:

- 1) The Commission's failure to consider Pacific Gas and Electric Company's (PG&E's) estimated "cut-backs" of California produced gas in order to provide a market for the proposed importation of Canadian gas.
- 2) The Commission's failure to adequately consider the availability of alternative supplies of natural gas from El Paso (and perhaps Transwestern).

Respectfully submitted,

HENRY F. LIPPITT, 2ND.,

Attorney for

California Gas Producers Association

*Independent Oil and Gas Producers
of California*

Jade Oil and Gas Company

December 12, 1966

626 Wilshire Boulevard

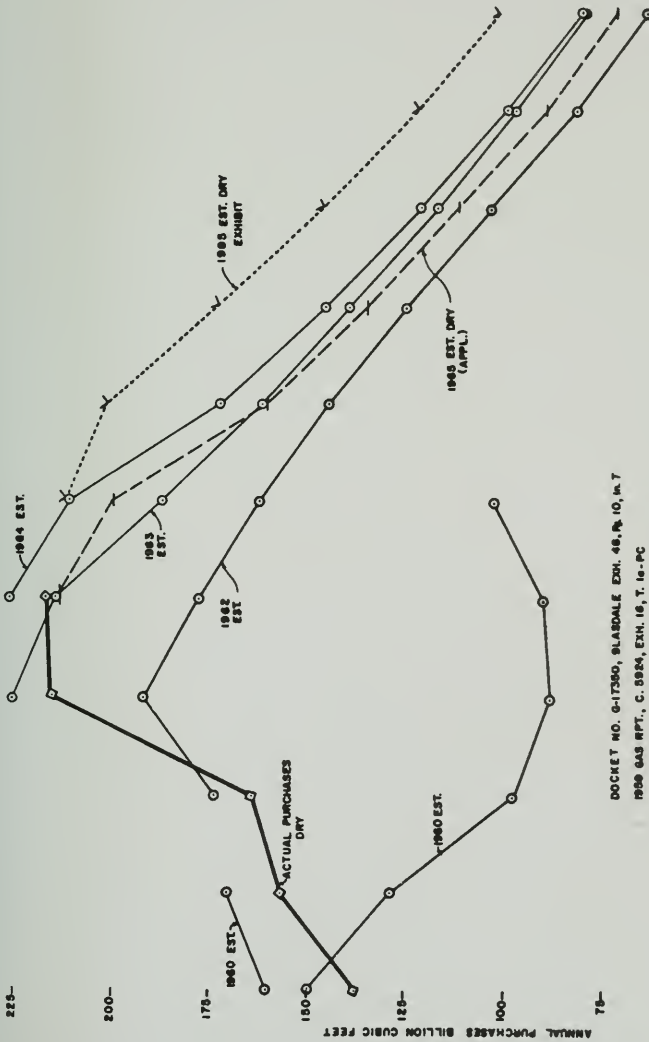
Los Angeles, California 90017

APPENDIX "B"

DOCKET NO. 51-15-23-11-11
EXHIBIT NO. 51-15-23-11-11
WITNESS: H. WEIDENH
DATE: 5/27/56
SHEET 2 OF 2

ESTIMATED AND ACTUAL ANNUAL PURCHASES

CALIFORNIA GAS
PACIFIC GAS AND ELECTRIC CO.



DOCKET NO. 51-15-23-11-11
1940 GAS RPT., C. 5524, EXH. 16, T. 1a-PC
1942 GAS RPT., C. 5524, EXH. 70, T. 1a-PC
1943 GAS RPT. (CPUC D. NO. 82260, T. 1a-NC MM T. 1a-OC)
1944 GAS RPT. (CPUC D. NO. 82260, T. 1a-NC MM T. 1a-OC)
APP. EXH. I (2) (a), Pg. 9 of 9 in. (3)
MRG. EXH. I (2) (a), Pg. 9 of 9 in. (3)
MRG. EXH. I (2) (a), Pg. 7 of 9 in. (11)

APPENDIX "A"

**COMPARISON OF DELIVERED COST OF GAS
TO PG&E AT CALIFORNIA BORDER**

TOTAL COST OF GAS

	Canadian Gas	El Paso Gas	Difference
1964	33.56¢	29.74¢	3.82¢
1965	32.89¢	28.74¢	4.15¢
1966	32.39¢	28.00¢	4.39¢
1967	31.14¢	27.75¢	3.39¢
1968	30.96¢	27.75¢	3.21¢
1969	31.13¢	27.75¢	3.38¢
1970	31.11¢	27.75¢	3.36¢

INCREMENTAL COST OF GAS

1968	23.33¢	20.22¢	3.11¢
1969	24.03¢	20.22¢	3.81¢
1970	24.47¢	20.22¢	4.25¢

Transwestern
Gas

1968	23.33¢	20.00¢	3.33¢
1969	24.03¢	20.00¢	4.03¢
1970	24.47¢	20.00¢	4.47¢

References:

Canadian gas: Blasdale, Ex. 19, page 4, lines 12, 24, 25 (R. 2413)

El Paso gas: 1964 - Rate Schedule G: Total Cost - 100% load factor price, Incremental Cost - Commodity Price.

1965 - After 1¢ per Mcf Permian Basin Area Rate decision reduction.

1966 - After ¾¢ per Mcf Tailored Supply Program reduction.

1967 - 1970 - After ¼¢ per Mcf additional Alternative Supply Proposal reduction.

Transwestern gas (Incremental only): 1965, Rate Schedule No. LX - after 1¢ per Mcf Permian Basin Area Rate decision reduction.

